

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 22, 2020, as he no longer had disability or residuals causally related to his accepted February 15, 2013 employment injury.

FACTUAL HISTORY

On February 19, 2013 appellant, then a 63-year-old supervisor, filed a notice of recurrence (Form CA-2a) alleging that on February 15, 2013 he suffered a recurrence of his September 9, 2011 injury under OWCP File No. xxxxxx065.³ He alleged that he was on light duty since the original injury and explained that he had fallen numerous times since. OWCP accepted the claim for tear of the left medial meniscus and localized primary osteoarthritis of the left knee. It paid appellant wage-loss compensation on the supplemental rolls as of April 8, 2013, and the periodic rolls as of September 22, 2013.

On November 6, 2019 OWCP referred appellant for a second opinion examination, along with a statement of accepted facts (SOAF), a set of questions, and the medical record, to Dr. David Elfenbein, a Board-certified orthopedic surgeon, to determine the status of appellant's accepted work-related conditions and his ability to return to work.

In a December 4, 2019 report, Dr. Elfenbein noted his review of the SOAF and appellant's medical records. He noted that appellant had undergone a total right knee replacement in June 2014, and a total left knee replacement at a medical facility in 2016. Dr. Elfenbein examined appellant and noted that appellant had current complaints of left knee pain, used a "cane for ambulation at all times when out of the house due to fear of giving way. [Appellant's] left knee continues to give out on him." He also noted that appellant was overweight and moved about the room with moderate difficulty. Dr. Elfenbein found active range of motion (ROM) of the left knee as 4 degrees of extension to 105 degrees of flexion with no effusion, and a midline total knee incision, well healed, and atrophy of 2.5 centimeters in the left calf. He also found lateral patellar tenderness, motor strength of 4+/5 in flexion and extension, no instability of the knee to varus, valgus, anterior, and posterior stress. Dr. Elfenbein found lateral sided tibial and femoral tenderness and medial sided tibial, but no femoral tenderness, normal sensation in both lower extremities with 2+ dorsalis pedis pulses present bilaterally, deep tendon reflexes of 2+ in bilateral lower extremities, and a seated straight leg raising test that was negative bilaterally. He reviewed the February 11, 2015 magnetic resonance imaging (MRI) scans of the thoracic and lumbar areas of appellant's spine, and noted that they revealed spondylosis at multiple levels with severe left neuroforaminal stenosis at L5-S1 with bulging disc and a T11 compression deformity.

Dr. Elfenbein opined that appellant's residual symptoms were not related to his left knee injury from February 5, 2013, but rather to his lumbar spine injury of September 11, 2011. He explained that the persistent giving way with weakness, atrophy of 2.5 centimeters noted in the

³ OWCP assigned the present claim OWCP File No. xxxxxx985. The record reflects that appellant has a prior claim for a September 9, 2011 traumatic injury under OWCP File No. xxxxxx065. OWCP accepted that claim for thoracic compression fracture T11, scalp contusion, and lumbar sprain. It has administratively combined appellant's claims, with OWCP File No. xxxxxx065 serving as the master file.

left calf, and the lack of any signs on examination of problems with the left knee arthroplasty, “point me in that direction.” Dr. Elfenbein noted that there were no inconsistencies, although appellant had underlying osteoarthritis and calcium pyrophosphate deposition disease and degenerative meniscal tearing. He explained that the arthritis and degenerative changes were likely exacerbated by the fall of February 15, 2013, and they were appropriately treated with a total knee arthroplasty. Dr. Elfenbein opined that the residual symptoms were more likely than not due to appellant’s lumbar spine injury, and not to his left knee arthritis and/or any issues with his total knee arthroplasty. He advised that there were no medical findings to indicate that the accepted conditions were still active and causing symptoms, rather “the old work injury of September 11, 2011 was likely the source of left leg discomfort, weakness and giving way.” Dr. Elfenbein opined that the total knee arthroplasty had resolved the underlying and preexisting osteoarthritis as well as the aggravation caused by the fall of February 15, 2013. Regarding a return to work, he advised that, considering only the left knee, appellant would be able to return to the duties of a supervisor, however, because of residual issues with regard to the lumbar injury of September 2011, he was unable to perform those duties. Dr. Elfenbein explained that the position required intermittent standing, sitting, and walking, varying from one to six hours per day, and intermittent lifting of objects weighing over 45 pounds, as well as frequent climbing, all of which would be difficult for appellant, and the propensity for his leg to give out would put him at significant risk for further injury on the job, based on the atrophy on the left calf. He advised that appellant’s inability to return to work was not due to his February 15, 2013 work injury, but rather to appellant’s September 11, 2011 work injury, and he prescribed sedentary work restrictions, and frequent position changes, with no lifting greater than 10 pounds, and without significant walking, standing, or climbing. Dr. Elfenbein also recommended a decompression of the severe foraminal stenosis at L5-S1 to prevent weakness and giving way in the leg.

By notice dated March 12, 2020, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits, based upon the opinion of Dr. Elfenbein that the accepted conditions had resolved under the current claim without residuals or disability. It explained that he indicated that appellant had residual impairment due to appellant’s lumbar condition, which was active under OWCP File No. xxxxxx065 with a September 9, 2011 date of injury, and he was eligible to receive continuing compensation and medical care under that claim. OWCP further explained that, if appellant’s benefits were terminated under the current claim, his benefits would resume under that prior claim. It afforded him 30 days to submit additional evidence or argument challenging the proposed termination.

By decision dated May 21, 2020, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective May 22, 2020. It noted that, as of that date, it had not received any additional evidence or argument. OWCP found that the weight of the medical evidence rested with Dr. Elfenbein.

On June 1, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review, which was held on August 31, 2020. During the hearing, appellant confirmed that he was receiving compensation in his other claim; however, the question remained whether he continued to require medical care for his left knee. He indicated that he continued to have pain and he received injections which helped to relieve his knee pain. Appellant also testified that he fell frequently and his physician indicated that he needed a knee replacement.

By decision dated October 6, 2020, the hearing representative affirmed the May 21, 2020 termination decision. It accorded the weight of the medical evidence to the opinion of Dr. Elfenbein, finding that appellant had no continuing employment-related residuals or disability of the left knee due to the February 15, 2013 work injury, and that his left knee symptomatology was attributed to the September 11, 2011 lumbar spine work injury. OWCP also noted that “no medical evidence pertaining to the left knee had been received in years.”

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee’s benefits.⁴ After it has determined that, an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ OWCP’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits, effective May 22, 2020, as he no longer had disability or residuals causally related to his accepted February 15, 2013 employment injury.

OWCP referred appellant to Dr. Elfenbein for a second opinion evaluation to determine the status of appellant’s accepted left knee conditions and his work capacity.

In a December 4, 2019 report, Dr. Elfenbein noted his review of the SOAF and medical records, and examined appellant. He noted that appellant had current complaints of left knee pain, and used a “cane for ambulation at all times when out of the house due to fear of giving way.

⁴ See *D.D.*, Docket No. 20-0243 (issued May 28, 2021); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ See *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁸ *K.W.*, *supra* note 6; see *A.G.*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake*, *id.*

[Appellant's] left knee continues to give out on him." However, Dr. Elfenbein explained that these symptoms were not related to the left knee work injury of February 5, 2013, but rather to appellant's lumbar spine work injury of September 11, 2011. He found persistent giving way with weakness, atrophy of 2.5 centimeters in the left calf, and the lack of any signs on examination of problems with the left knee arthroplasty indicated the symptoms were due to the September 11, 2011 back injury. Dr. Elfenbein diagnosed underlying osteoarthritis, calcium pyrophosphate deposition disease, and degenerative meniscal tearing. He explained that the arthritis and degenerative changes in the knee were exacerbated by the work injury on February 15, 2013, but were appropriately treated with the total knee arthroplasty. Dr. Elfenbein opined that the "[r]esidual symptoms were more likely than not due to [appellant's] lumbar spine injury and not to his left knee arthritis and/or any issues with his total knee arthroplasty." He advised that there were no medical findings to support that the accepted knee conditions were still active and the total knee arthroplasty had resolved the underlying and preexisting osteoarthritis in the knee, as well as the aggravation caused by the work injury on February 15, 2013. Dr. Elfenbein advised that appellant's inability to return to work was not due to his February 15, 2013 knee injury, but rather to the back injury on September 11, 2011. He recommended a sedentary work restriction and decompression of the severe foraminal stenosis at L5-S1 to prevent weakness and giving way in the leg.

The Board finds that OWCP properly accorded the weight of the medical evidence to Dr. Elfenbein who based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion. Dr. Elfenbein provided a well-rationalized opinion based on medical evidence regarding the accepted conditions causally related to appellant's February 15, 2013 employment injury.

Accordingly, OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective May 22, 2020.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 22, 2020, as he no longer had disability or residuals causally related to his accepted February 15, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 30, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board